IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.4345 OF 2005
WITH
CRIMINAL APPLICATION NO.4324 OF 2005

Harinarayan G.Bajaj ..Applicant

Vs.

The State of Maharashtrah
and Anr. ..Respondents

....
P.D.Desai Adv. for applicant
Y.M.Nakhwa A.P.P. for State
....

CORAM: SMT.V.K.TAHILRAMANI,J.

DATE : OCTOBER 19, 2006

P.C.

1. Heard the learned advocate for the applicant-original accused and the learned A.P.P. for the State. None appears for the respondent No.2-original complainant though served.

2. The applicant is seeking quashing of process issued against him under Section 138 of Negotiable Instruments Act. The said process has been issued in C.C.No.431/S/2001 and 2676/SS/2005. The said

cases are pending before the learned Metropolitan Magistrate, 33rd Court, Ballard Pier, Mumbai.

3. The applicant had earlier preferred applications for quashing of process before the learned Magistrate. The said applications came to be rejected by the learned Magistrate. Thereafter, the applicant preferred revision applications for recalling of process before the learned Sessions Judge. The learned Sessions Judge by order dated 15th December, 2004 rejected the said revision applications on the ground that they are not maintainable. The learned Sessions Judge held that in view of the decision of the Supreme Court in the case of **Adalat Prasad Vs.Rooplal Jindal; JT 2004(7) SC 243,** the Sessions Court did not have the power to set aside the order of the Magistrate issuing process.

4. The decision in the case of **Adalat Prasad (Supra),** has been considered by this Court in the case of **V.K.Jain and others Vs. Pratap P.Padode, 2005(3) Mh.L.J.778.** In **V.K.Jain's** case, it has been held that a revision against the order of the

Magistrate issuing process is maintainable before the Sessions Court. It is clearly held in the said decision i.e. **V.K.Jain's case (supra)**, that the Sessions Court can entertain the revision and dispose it of on merits. In view of the decision of this Court in **V.K.Jain (supra)**, the orders of the learned Sessions Judge dated 15th December, 2004 are clearly erroneous and deserve to be set aside. Accordingly, orders dated 15th December, 2004 are set aside. Revisions are restored to file. The learned Sessions Judge after hearing the necessary parties afresh, shall dispose of the said revisions on merits. The stay granted earlier by this Court, stands extended till the revisions are disposed of by the learned Sessions Judge.

5. Applications are disposed of.

[SMT.V.K.TAHILRAMANI,J.]